

ORIGINAL

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FILED

JAN 22 2003

U.S. COURT OF  
FEDERAL CLAIMS

NEW BREED LEASING CORP.,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

No. \_\_\_\_\_

03 - 115C

**PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING ORDER**

Plaintiff New Breed Leasing Corp. ("New Breed") respectfully moves this Court to issue a Temporary Restraining Order restraining defendant, its officers, agents, and employees, as well as all other persons in active concert or participation with them, including the United States Postal Service ("USPS"), from (i) making any award to APL Logistics, Inc. ("APL"), or any other party except New Breed, under Solicitation No. 102584-02-A-0413 for a Mail Transport Equipment Service Center ("MTESC") in New Jersey, (ii) taking any further actions in furtherance of or in connection with any award for or performance of such MTESC Contract by APL, (iii) proceeding with any further performance of the MTESC Contract by APL, or (iv) obtaining the supplies and services identified in the Solicitation from any source except New Breed.

Although New Breed is filing this Motion for Temporary Restraining Order, New Breed understands that the Court's practice in bid protest cases is to promptly convene an initial status conference under Section IV of Appendix C to the Rules of the Court of Federal Claims. If defendant agrees to maintain the status quo during the course of the proceedings – by not making award to APL or not taking other action in furtherance of the award – there will be no need for

the Court to consider this Motion, and the Court and the parties may proceed to the preliminary injunction stage of this action.

New Breed has a substantial likelihood of prevailing on the merits of this action by showing that the planned award by the USPS violates regulatory provisions and the Solicitation terms, as well as applicable precedent. Unless this Motion is granted, New Breed and the public will suffer immediate and irreparable harm from USPS's award. New Breed and the public will also suffer immediate and irreparable injury if USPS continues with actions in furtherance of or in connection with the award. Neither the defendant, APL, nor the public will suffer any harm from the requested equitable relief. The public interest demands adherence to applicable procurement regulations and Solicitation terms, and thus fully supports issuance of the requested relief.

These and other grounds for this Motion are set forth more fully in New Breed's Verified Complaint for Declaratory Judgment and Injunctive Relief and in Plaintiff's Memorandum of Points and Authorities in Support of Motion for Temporary Restraining Order or, in the Alternative, for Preliminary Injunction.

WHEREFORE, plaintiff New Breed respectfully requests that this Court issue a Temporary Restraining Order as described above. A proposed Order is attached.

Respectfully submitted,

NEW BREED LEASING CORP.

By:   
Philip J. Davis

OF COUNSEL:

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Counsel of Record for  
NEW BREED LEASING CORP.

Dated: January 22, 2003

NEW BREED LEASING CORP.,  
Plaintiff,  
v.  
UNITED STATES OF AMERICA,  
Defendant.

This matter comes before the Court on the Verified Complaint for Declaratory Judgment and Injunctive Relief and Motion for Temporary Restraining Order, together with a supporting Memorandum of Points and Authorities, filed by plaintiff New Breed Leasing Corp. (“New Breed”). Having considered these materials and being fully advised in the premises, the Court hereby finds that (i) New Breed would be irreparably injured by defendant, including the United States Postal Service (“USPS”), (a) making an award to APL Logistics Inc. (“APL”), or any other party except New Breed, under Solicitation No. 102584-02-A-0413 for a Mail Transport Equipment Service Center (“MTESC”) in New Jersey, and (b) taking any further actions in furtherance of or in connection with any award for or performance of such MTESC Contract by APL; (ii) New Breed has a substantial likelihood of success on the merits; (iii) the balance of hardships favors issuance of this Temporary Restraining Order; and (iv) the public interest supports issuance of this Order. Therefore, it is

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ORDERED, ADJUDGED and DECREED that defendant, its officers, agents, and employees, as well as all persons in active concert or participation with them, including the USPS, are hereby restrained from (a) making any award to APL or any other party except New Breed under Solicitation No. 102584-02-A-0413 for an MTESSC in New Jersey, (b) taking any further actions in furtherance of or in connection with any award for or performance of such MTESSC Contract by APL, (c) proceeding with any further performance of the MTESSC Contract, or (d) obtaining the supplies and services identified in the Solicitation from any source except New Breed until the Court can consider Plaintiff's Motion for Preliminary Injunction; and it is further

ORDERED, ADJUDGED and DECREED that this Order shall be effective for ten (10) days from the date of this Order, unless further ordered by this Court; and it is further

ORDERED that New Breed shall deposit with the Clerk of the Court a bond in the amount of \$ \_\_\_\_\_ as security; and it is further

ORDERED that New Breed's Motion for Preliminary Injunction shall be heard on the \_\_\_\_ day of \_\_\_\_\_, 2003, at \_\_\_\_\_ .m.

Dated: January \_\_\_, 2003

\_\_\_\_\_  
Judge

12025601

## CERTIFICATE OF SERVICE

I hereby certify that on this 22<sup>nd</sup> day of January 2003, I caused Plaintiff's Motion for Temporary Restraining Order (and proposed Order) to be hand delivered to the following:

John H. Williamson, Esq.  
Commercial Litigation Branch  
Civil Division  
U.S. Dept. of Justice  
1101 L St., NW, Room 12078  
Washington, DC 20530  
Tel: 202.307.0277

I also certify that on this 22<sup>nd</sup> day of January 2003, I caused Plaintiff's Motion for Temporary Restraining Order (and proposed Order) to be delivered via overnight delivery to the following:

Timothy Windle, Esq.  
General Counsel  
APL Logistics  
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Oakland, CA 94607

  
Philip J. Davis

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